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U.S. BANKRUPTCY COURT
MARY A. SCHOTT, CLERK

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

LAS VEGAS DIVISION

In re:	)	Case No. 12-17527-MKN
)	
MICHAEL BRUCE STONE,	)	Chapter 7
)	
Debtor;	)	Adversary No. 16-1081
)	
<u>MICHAEL B. STONE,</u>)	
)	
Plaintiff,	)	FIRST AMENDED ADVERSARY
	)	COMPLAINT TO DETERMINE
vs.	)	DISCHARGEABILITY OF CERTAIN
	)	DEBTS AND FOR OTHER RELIEF
STATE BAR OF CALIFORNIA;)	
STATE BAR COURT OF)	
CALIFORNIA; SUPREME COURT OF	)	Before the Honorable
CALIFORNIA,	)	Michael K. Nakamura,
	)	U.S. Bankruptcy Judge
Defendants.)	
)	
)	

PLAINTIFF, MICHAEL B. STONE, alleges:

INTRODUCTION

1. The Supreme Court of California ("Supreme Court") has near-plenary authority over the licensing of attorneys in California: yet it lacks the power to suspend an attorney's

1 license solely because of the attorney's failure to pay debts
2 that were discharged in bankruptcy. Title 11, *United States*
3 *Code*, Section 525(a); see *Perez v. Campbell*, 403 U.S. 637, 91
4 S.Ct. 1704, 29 L.Ed.2d 233 (1971),

5 PARTIES

6 2. Plaintiff is a suspended California attorney who was
7 the Debtor in the underlying Chapter 7 case, *In re Michael Bruce*
8 *Stone*, Case No. 12-17527-MKN, Chapter 7, discharged December 1,
9 2012 in this Court and judicial district.

10 3. Defendant State Bar of California ("State Bar") is a
11 public corporation chartered by the California Legislature.
12 Defendants State Bar Court of California ("State Bar Court"),
13 and Supreme Court of California ("Supreme Court"), are judicial
14 branch agencies of the State of California.

15 4. The membership of the State Bar of California is
16 comprised of all attorneys licensed in California (it is an
17 "integrated bar"). The functions of the State Bar include, inter
18 alia, the licensing of attorneys, the prosecution of
19 disciplinary charges against attorneys, and the administration
20 of its Client Security Fund.

21 5. Disciplinary actions against attorneys are filed by
22 the State Bar Office of Chief Trial Counsel with the Hearing
23 Department of the State Bar Court, which holds trials, hears
24 evidence, and enters findings and orders. One appeal as of right
25 may be taken to the Review Department of the State Bar Court.
26 After that, an aggrieved party may seek discretionary review
27 with the Supreme Court of California. Orders of the State Bar
28 Court constitute recommendations for discipline which are then

1 transmitted to the Supreme Court for entry of judgment.

2 JURISDICTION AND VENUE

3 6. This Court has subject matter jurisdiction over this
4 adversary proceeding, which arises under Title 11 of the United
5 States Code (the "Bankruptcy Code"); and it arises in, and
6 relates to Case No. 12-17527-MKN, in the United States
7 Bankruptcy Court for the District of Nevada, Las Vegas Division,
8 pursuant to Title 28, *United States Code*, Sections 157(b)(2)(I)
9 and 1334(b).

10 7. The claims and causes of action set forth herein
11 concern, *inter alia*, a request for a declaratory judgment that
12 certain debts were discharged.

13 8. This adversary proceeding is a "core" proceeding to be
14 heard and determined by the Bankruptcy Court pursuant to Title
15 28, *United States Code*, Section 157(b)(2).

16 9. Venue is proper in the District of Nevada
17 pursuant to Title 28, *United States Code*, Section 1409.

18 NATURE OF THE CASE

19 10. Plaintiff is presently suspended from the practice of
20 law in California for two reasons: administratively, for failure
21 to pay child support arrearages¹; and also for disciplinary
22 reasons, because of an attorney discipline case against him.
23 This adversary complaint concerns only State Bar disciplinary
24 actions.

25 11. On February 21, 2014, defendant State Bar of
26 California, initiated disciplinary charges against plaintiff,
27

28 ¹ See, e.g., the "Bradley Amendment," 42 USC § 666(a)(16).

1 filed in California State Bar Court as Case 13-N-17388, alleging
2 that plaintiff violated *Cal. Rule of Court* 9.20(c) by failing to
3 "refund all unearned fees" and to also file a declaration that
4 he had done so, all by October 31, 2013.

5 12. Case 13-N-17388 was based solely upon failure to pay
6 debts that were previously discharged in Plaintiff's related
7 Chapter 7 bankruptcy case 12-17527-MKN.

8 13. As of October 31, 2013, Plaintiff was unable to file a
9 truthful declaration that he had paid the debts underlying Case
10 13-N-17388.

11 14. There exists no substantive distinction between
12 failing to pay a debt and failing to make a declaration that the
13 debt was paid.

14 15. After February 21, 2014, proceedings were had in the
15 California State Bar Court in Case 13-N-17388, which resulted in
16 findings that plaintiff was culpable for violating *Cal. Rule of*
17 *Court* 9.20(c) and imposing discipline on plaintiff including,
18 inter alia, a two-year actual suspension from the practice of
19 law.

20 16. As of April 14, 2016, Case 13-N-17388 was pending
21 before the California Supreme Court.

22 17. This adversary complaint is based on new Ninth Circuit
23 case law, to wit, the opinion in *Marilyn S. Scheer v. State Bar*
24 *of California* (9th Cir., No. 14-56622, filed April 14, 2016)²
25 ("Scheer") which holds that debts owed by attorneys to clients
26 for unpaid fees are dischargeable in bankruptcy, the same as
27

28 ² Defendants cite this case as 819 F.3d 1206 (9th Cir. 2016).

1 unsecured debts owed by persons engaged in other occupations.

2 18. On April 26, 2016, Plaintiff applied to the California
3 Supreme Court for a stay of proceedings so that he could request
4 that the matter be remanded to the State Bar Court for further
5 proceedings consistent with *Scheer*.

6 19. Attorneys who represent State Bar in disciplinary
7 cases have an ethical duty, analogous to that of public
8 prosecutors in criminal cases, to do justice to parties and not
9 merely to win cases for the sake of winning. This includes a
10 duty to promptly recommend dismissal or discontinuance of cases
11 that are no longer legally tenable. See *Cal. Rule of*
12 *Professional Conduct* 5-100.

13 20. Plaintiff's application for a stay of proceedings in
14 the California Supreme Court was duly served on the attorneys
15 for the State Bar, and State Bar was thereby placed on notice
16 that it would be violating the discharge injunction in
17 Plaintiff's bankruptcy by continuing to maintain and to
18 prosecute Case 17-N-17388.

19 21. At the very least, State Bar had a duty to
20 investigate, in good faith, Plaintiff's assertion that the Ninth
21 Circuit opinion in *Scheer*, together with the discharge
22 injunction of Title 11, United States Code, Section 524,
23 prohibited State Bar from disciplining Plaintiff based solely on
24 discharged debts formerly owed by Plaintiff.

25 22. Instead of investigating Plaintiff's claim that *Scheer*
26 applies to his case, that all debts relevant to case 13-N-17388
27 were discharged in Plaintiff's Chapter 7 bankruptcy, and that
28 State Bar could not discipline Plaintiff solely on the basis of

1 the previously discharged debts, on May 9, 2016, State Bar
2 opposed Plaintiff's application for a stay of proceedings only
3 13 days after Plaintiff filed it.

4 23. On June 8, 2016, in case S232885, *In Re Michael B.*
5 *Stone on Discipline*, the California Supreme Court denied
6 Plaintiff's stay application; it ratified the findings of the
7 State Bar Court in Case 13-N-17388; and it ordered, *inter alia*,
8 that Plaintiff be suspended from practicing law for at least two
9 years.

10 24. Prior to *Scheer*, both Plaintiff and State Bar
11 reasonably believed and assumed that debts owed by attorneys to
12 clients for unearned fees were nondischargeable, or that the
13 discharge of such debts did not impair the ability of State Bar
14 to impose disciplinary sanctions against attorneys for not
15 paying them.

16 25. Now that there is clear Ninth Circuit case law
17 declaring these types of debts to be fully dischargeable,
18 Plaintiff contends that for State Bar to impose discipline upon
19 Plaintiff solely because he failed to pay lawfully discharged
20 debts violates the discharge injunction of Title 11, United
21 States Code, Section 524; and further, that the action of the
22 Supreme Court of California taking disciplinary action against
23 Plaintiff's law license for this reason violated Title 11,
24 United States Code, Section 525(a).

25 26. It should be noted that all debts relevant to State
26 Bar disciplinary action 13-N-17388/S232885, though each was in
27 fact discharged in Plaintiff's Chapter 7 bankruptcy proceeding,
28 were paid in full with interest on or before February 20, 2014.

1 State Bar initiated discipline against Plaintiff even after the
2 debts were fully paid, because full payment occurred 52 days
3 late.

4 PROCEDURAL HISTORY

5 27. On June 26, 2012, Plaintiff filed a Chapter 7
6 bankruptcy petition in this Court. The Chapter 7 trustee
7 determined that there were no assets to be distributed to
8 creditors; and, on December 1, 2012, Plaintiff received a
9 Discharge.

10 28. As of March 19, 2013, there was a prior State Bar
11 discipline case against Plaintiff, number 12-H-16290 alleging,
12 inter alia, that Plaintiff failed to perform probationary terms
13 for a prior public reproof. Plaintiff admitted culpability and
14 stipulated to the disciplinary charges in State Bar Case 12-H-
15 16290. The signed stipulation in Case 12-H-16290 was negotiated
16 and agreed upon between Plaintiff and State Bar, especially on
17 the subject of restitution to as a condition of probation. A
18 restitution condition was stipulated as to two creditors.

19 29. The stipulated recommendation was transmitted to the
20 Supreme Court of California. The Supreme Court rendered judgment
21 August 22, 2013 which provides in pertinent part:

22 The court orders that Michael B. Stone, State Bar
23 Number 160177, is suspended from the practice of
24 law for two years, execution of that period of
25 suspension is stayed, and he is placed on probation
for two years subject to the following conditions:

26 1. Michael B. Stone is suspended from the practice
27 of law for a minimum of the first 90 days of
probation, and he will remain suspended until the
following requirements are satisfied:

28 i. He makes restitution to the following payees (or

reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with *Cal. Business & Professions Code* section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles.

(1) Carney Tews Garcia in the amount of \$3,751.50 plus 10 percent interest per year from January 12, 2011;

(2) The County of Orange in the amount of \$900 plus 10 percent interest per year from December 19, 2008.

ii. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must provide proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated.

At the expiration of the period of probation, if Michael B. Stone has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and the suspension will be terminated.

Michael B. Stone must also comply with *California Rules of Court*, Rule 9.20, and perform the acts specified in subdivisions (a) and (c) within 30 and 40 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension.

30. Plaintiff satisfactorily completed two years probation, and complied with the express restitutionary conditions of probation by paying Carney Tews Garcia and County of Orange within the probationary period.

31. However, State Bar complained that Plaintiff failed to comply with *Cal. Rule of Court* 9.20(c), which provides in pertinent part:

Rule 9.20. Duties of disbarred, resigned, or suspended attorneys

(a) Disbarment, suspension, and resignation orders

The Supreme Court may include in an order disbaring or suspending a member of the State Bar, or accepting his or her resignation, a direction that the member must, within

1 such time limits as the Supreme Court may prescribe:

2 . . .

3 (3) Refund any part of fees paid that have not been earned;

4 . . .

5 (c) Filing proof of compliance

6 Within such time as the order may prescribe after the
7 effective date of the member's disbarment, suspension, or
8 resignation, the member must file with the Clerk of the
9 State Bar Court an affidavit showing that he or she has
10 fully complied with those provisions of the order entered
11 under this rule[.]

12 (d) Sanctions for failure to comply

13 [A] suspended member's willful failure to comply with the
14 provisions of this rule is a cause for disbarment or
15 suspension and for revocation of any pending probation.

16 32. In other words, in addition to the express
17 restitutionary conditions of probation with respect to Ms.
18 Garcia and to County of Orange, for which he had two years to
19 comply, Plaintiff was subject (according to State Bar) to an
20 additional, implied-in-law restitutionary condition thaath he
21 must refund all unearned fees, not just those set forth as
22 express conditions of probation, within 30 days after the
23 effective date of the Supreme Court discipline order (by October
24 13, 2013).

25 33. The State Bar Court, in Case 13-N-13788, found that
26 Plaintiff violated Rule 9.20(c) by not timely refunding all
27 unearned fees and by not then certifying that he had done so.
28 The State Bar Court recommended that Plaintiff's law license be
suspended for two additional years. The State Court Review
Department affirmed.

1 34. Plaintiff did not choose to seek discretionary review
2 of the decision of the State Bar Court Review Department.

3 35. Case 13-N-17388 would have ended there but for the
4 Ninth Circuit *Scheer* opinion which supports Plaintiff's
5 contention that all of Plaintiff's debts to former clients for
6 unearned fees were dischargeable, and were in fact discharged in
7 Plaintiff's Chapter 7 bankruptcy.

8 36. All persons with claims against Plaintiff based on
9 unearned fee claims were properly listed and scheduled; and each
10 such claim was discharged in Plaintiff's Chapter 7 proceeding.

11 37. Accordingly, the action taken by the California
12 Supreme Court suspending Plaintiff's law license violated Title
13 11, *United States Code*, Section 525(a) which provides:

14 (a) [A] governmental unit may not deny, revoke, suspend, or
15 refuse to renew a license ... against, a person that is or has
16 been a debtor under this title or a bankrupt or a debtor under
17 the Bankruptcy Act, or another person with whom such bankrupt or
18 debtor has been associated, solely because such bankrupt or
19 debtor is or has been a debtor under this title or a bankrupt or
20 debtor under the Bankruptcy Act, has been insolvent before the
commencement of the case under this title, or during the case
but before the debtor is granted or denied a discharge, or has
not paid a debt that is dischargeable in the case under this
title or that was discharged under the Bankruptcy Act.

21 38. To the extent the Bankruptcy Court and state courts
22 might have concurrent jurisdiction to determine controversies
23 involving the dischargeability, or the discharge status, of any
24 debt or claim, Plaintiff elects to have any such controversies
25 heard and determined in Bankruptcy Court.

26 WHEREFORE PLAINTIFF PRAYS JUDGMENT AS FOLLOWS:

27 AGAINST ALL DEFENDANTS:

28 1. For a declaratory judgment that each of the following

debts were properly listed and scheduled, and were discharged in Plaintiff's Chapter 7 bankruptcy case on December 1, 2012:

- a. Olga Maria Altieri;
- b. Bruce Thomas;
- c. State Bar/Client Security Fund.

AGAINST SUPREME COURT OF CALIFORNIA AND CALIFORNIA STATE BAR COURT:

2. For an order Supreme Court of California and California State Bar Court to dismiss, expunge, and vacate State Bar disciplinary action 13-N-17388/S232885, in its entirety, with prejudice and without leave to amend; and exonerating Plaintiff from any finding of wrongdoing or culpability in connection therewith.

AGAINST STATE BAR OF CALIFORNIA:

3. For further orders related to State Bar disciplinary action 13-N-17388, as follows:

a. That State Bar shall forthwith redact Plaintiff's public discipline page from its website to completely remove all references to disciplinary action 13-N-17388/S232885;

b. That State Bar shall rescind and release Plaintiff from any claim or assessment of fees or costs which have been, or which may in the future be, imposed against Plaintiff by reason of disciplinary action 13-N-17388/S232885.

c. To the extent that State Bar has published, communicated, or disseminated the fact of Plaintiff's disciplinary suspension in Case 13-N-17388/S232885 to any person, data service, court, and/or organization, including sister-state bar associations, and specifically including the

1 California State Bar Journal, State Bar shall publish,
2 communicate and disseminate the fact that such suspension was
3 vacated with equal prominence as was given to the original
4 publication or communication.

5 d. That disciplinary action 13-N-17388 shall not be
6 considered a prior instance of discipline for any purpose;

7 e. That State Bar shall take any other action that the
8 Court deems reasonable or appropriate to restore Plaintiff to
9 the status quo ante as if Case 13-N-17388/S232885 had never been
10 filed or prosecuted;

11 4. For general damages;

12 5. For special damages for Plaintiff's loss of earnings,
13 proximately resulting from Plaintiff's inability to practice his
14 profession, from December 12, 2013, to the present, according to
15 proof;

16 6. For punitive damages;

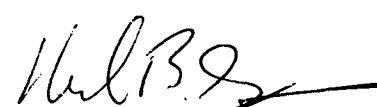
17 7. For any attorney fees and costs incurred by Plaintiff
18 in this adversary proceeding and in any appeals, according to
19 proof;

20 8. For attorney fees, costs, and expenses incurred in
21 defending State Bar disciplinary action 13-N-17388, according to
22 proof;

23 9. For an order that the Bankruptcy Court shall retain
24 jurisdiction of this matter as necessary to enforce its orders;

25 10. For all proper relief.

26 Dated: August 1, 2016

27 
/S/MICHAEL B. STONE

28 Plaintiff, Pro Se